

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBERT QUILL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 07-435-SLR
	)	
	)	
CATHOLIC DIOCESE OF	)	
WILMINGTON, INC.,	)	
ST. ELIZABETH'S CATHOLIC	)	
CHURCH, Rev. FRANCIS G. DELUCA,	)	
and Rev. MICHAEL A. SALTARELLI, in	)	
his official capacity,	)	
	)	
Defendants.	)	

**MOTION OF DEFENDANTS  
CATHOLIC DIOCESE OF WILMINGTON, INC. AND BISHOP MICHAEL A.  
SALTARELLI TO STRIKE PLAINTIFF'S RULE 12(c) MOTION FOR PARTIAL  
JUDGMENT ON THE PLEADINGS, AND/OR RULE 56(a), (c), AND (d)  
MOTION FOR PARTIAL SUMMARY JUDGMENT, ON THE  
CONSTITUTIONALITY OF THE CHILD VICTIM'S ACT AS WRITTEN  
UNDER THE U.S. CONSTITUTION; OR IN THE ALTERNATIVE TO STAY  
BRIEFING ON PLAINTIFF'S MOTION; OR IN THE ALTERNATIVE,  
TO EXTEND TIME TO RESPOND TO PLAINTIFF'S MOTION**

Defendants Catholic Diocese of Wilmington, Inc. and Bishop Michael A. Saltarelli (collectively the "Moving Defendants"), by and through their undersigned counsel hereby move this Court to Strike Plaintiff's Rule 12(c) Motion for Partial Judgment on the Pleadings, and/or Rule 56(a), (c), and (d) Motion for Partial Summary Judgment, on the Constitutionality of the Child Victim's Act as Written Under the U.S. Constitution (hereinafter "Plaintiff's Motion"); or in the alternative to Stay Briefing on Plaintiff's Motion; or in the alternative to Extend the Time to Respond to Plaintiff's Motion, for the reasons stated below:

1. On Tuesday October 16, 2007 Plaintiff filed his Motion accompanied by an Opening Brief and a 314-page Appendix. (D.I. 27, 28, 29) Pursuant to Local Rule 7.1.2(b), the response of Moving Defendants to Plaintiff's Motion is due on October 30, 2007.

2. On October 18, 2007, the Moving Defendants wrote to Plaintiff's counsel requesting that he withdraw Plaintiff's Motion as premature. (Letter from Mary F. Dugan, Esq. to Stephen Neuberger, Esq., Oct. 18, 2007, attached hereto at Ex. 1) On October 22, 2007, Plaintiff's counsel informed Moving Defendants that he would not withdraw Plaintiff's Motion. (Email from Stephen Neuberger, Esquire to Mary Dugan, Esquire, Oct. 22, 2007, attached hereto at Ex. 2)

3. This Court should strike Plaintiff's Motion because it is premature. Plaintiff's Motion is made pursuant to F.R.C.P. 12(c), Motion for Judgment on the Pleadings. Rule 12(c) provides that a party may file a motion for judgment on the pleadings "after the pleadings are closed but within such time as not to delay the trial."

4. The pleadings in this matter are not closed. Defendant Rev. DeLuca has not yet answered or otherwise responded to the complaint, although counsel has entered an appearance on his behalf. (D.I. 26) On October 19, 2007, Plaintiff filed a Rule 55(b) Motion for a Default Judgment Against Defendant DeLuca and For a Trial on Damages (D.I. 32) and a Rule 55(a) Motion to the Clerk for an Entry of Default. (D.I. 31). Furthermore, the Moving Defendants filed Motions to Dismiss, including on jurisdictional grounds (D.I. 20, 25), and briefing on these Motions will not be complete until November 2, 2007. (D.I. 18)

5. Therefore, this Court should strike Plaintiff's Motion as premature, without prejudice to Plaintiff's right to re-file it at a later, procedurally appropriate time.

6. In the alternative, treating Plaintiff's Motion as one for summary judgment, it should be briefed during the period set aside for such motions in the scheduling order to be issued by the Court. Pursuant to the Order for a Scheduling Conference entered by this Court on October 22, 2007 (D.I. 33), a scheduling conference will be held on November 14, 2007 and a scheduling order, including dates for summary judgment motions, will issue shortly thereafter.

7. After a factual record has been fully developed, Moving Defendants may file a motion for summary judgment challenging the constitutionality of 10 DEL. C. § 8145 under both the federal and state constitutions, as facially unconstitutional and unconstitutional as applied to the facts of this case. It would be an inefficient use of the resources of both counsel and this Court to address constitutional challenges to the same statute at two different junctures in this litigation.

8. Thus, if this Court treats Plaintiff's Motion as one for summary judgment, Moving Defendants request that briefing on Plaintiff's Motion be stayed until such time as this Court's scheduling order provides for summary judgment motions to be filed and briefed.

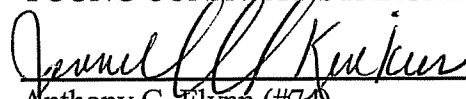
9. Finally, if this Court decides that Plaintiff's Motion is procedurally timely, and this Court does not stay briefing on the Motion, then Moving Defendants request an extension of time in which to respond to Plaintiff's Motion. Plaintiff's Motion

addresses a critical issue of first impression – the constitutionality of a Delaware state statute enacted in July 2007 – and cites eighty-four (84) cases from thirty-five (35) different courts. The case law cited by Plaintiff comprises over five hundred (500) pages of court opinions. This amount of judicial authority will require a thorough and full review which Moving Defendants cannot complete by the current response date of October 30, 2007. At a minimum, Moving Defendants request that they be given at least as much time as they would have if Plaintiff's Motion is treated as one for summary judgment.

10. If this Court decides that briefing on Plaintiff's Motion should continue at this stage of the proceedings, then Moving Defendants request permission to file their Answering Brief on or before November 28, 2007, and that Plaintiff's Reply Brief be filed on or before December 18, 2007.

WHEREFORE, Moving Defendants pray that this Court strike Plaintiff's Rule 12 (c) Motion for Partial Judgment on the Pleadings, and/or Rule 56(a), (c), and (d) Motion for Partial Summary Judgment, on the Constitutionality of the Child Victim's Act as Written Under the U.S. Constitution; or in the alternative stay briefing on Plaintiff's Motion; or in the alternative extend Moving Defendants' time to respond to Plaintiff's Motion until November 28, 2007, and grants such other relief as this Court may deem just and proper.

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Attorneys for Defendants Catholic Diocese of  
Wilmington, Inc. and Rev. Michael A. Saltarelli

Date: October 23, 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBERT QUILL,

Plaintiff,

v.

CATHOLIC DIOCESE OF WILMINGTON, INC.,  
ST. ELIZABETH'S CATHOLIC CHURCH, Rev.  
FRANCIS G. DELUCA, and Rev. MICHAEL A.  
SALTARELLI, in his official capacity,

Defendants.

C.A. No. 07-435-SLR

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2007, having heard Defendants Catholic Diocese of Wilmington, Inc. and Bishop Michael A. Saltarelli's Motion to Strike Plaintiff's Rule 12(c) Motion for Partial Judgment on the Pleadings, and/or Rule 56(a), (c) and (d) Motion for Partial Summary judgment, on the Constitutionality of the Child Victim's Act as Written Under the U.S. Constitution; Or in the Alternative to Stay Briefing on Plaintiff's Motion; Or in the Alternative, to Extend Time to respond to Plaintiff's Motion, and responses thereto,

IT IS HEREBY ORDERED that Defendants' Motion is GRANTED.

---

Judge Sue L. Robinson

**Exhibit “A”**

**Dugan, Mary**

---

**From:** Dugan, Mary  
**Sent:** Thursday, October 18, 2007 5:21 PM  
**To:** 'sjn@neubergerlaw.com'  
**Cc:** 'Tom@JandClaw.com'; 'Reardon, Mark'; 'scasarino@casarino.com'; Flynn, Anthony  
**Subject:** Quill v. CDOW, et al  
  
**Attachments:** CDOW-Quill-Dugan LT Neuberger.pdf

Please see attached letter.



CDOW-Quill-Dugan  
LT Neuberger....

Mary F. Dugan  
Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
P.O. Box 391  
Wilmington, DE 19899-0391  
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mdugan@ycst.com

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OF COUNSEL  
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EDWARD B. MAXWELL, 2ND

October 18, 2007

### VIA E-MAIL & HAND DELIVERY

Stephen J. Neuberger, Esq.  
The Neuberger Firm, P.A.  
Two East Seventh Street, Suite 3  
Wilmington, Delaware 19801

Re: Quill v. Catholic Diocese of Wilmington, Inc., et al.  
Case No. 07-435 SLR

Dear Steve:

I write on behalf of our clients, Catholic Diocese of Wilmington (the "Diocese") and Reverend Michael A. Saltarelli ("Bishop Saltarelli"), regarding the Plaintiff's Rule 12(c) Motion for Partial Judgment on Pleadings, and/or Rule 56(a), (c), and (d) Motion for Partial Summary Judgment, on the Constitutionality of the Child Victim's Act as Written under the U.S. Constitution, filed on Tuesday, October 16, 2007 ("Motion").

For the reasons outlined below, the Diocese and Bishop Saltarelli request that you withdraw your Motion at this time, without prejudice to your right to re-file it at a later, procedurally appropriate date. Rule 12(c) permits the filing of a motion for judgment on the pleadings "after the pleadings are closed but within such time as not to delay the trial." Fed. R. Civ. P. 12(c). The pleadings in this matter are not closed. The Motion to Dismiss filed by the Diocese and the Bishop, which was also adopted by St. Elizabeth's Catholic Church, is still pending. (D.I. 20, 25) The Court has not issued an opinion on the Motion to Dismiss because briefing will not even be complete until November 2, 2007. (D.I. 18) Furthermore, Father DeLuca has not yet answered or otherwise responded to the complaint, although counsel has entered an appearance on his behalf. (D.I. 26)

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Stephen J. Neuberger, Esq.

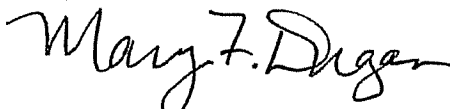
October 18, 2007

Page 2

If, alternatively, Plaintiff's Motion is considered as a Motion for Summary Judgment, it should be briefed during the period set aside for summary judgment motions in a scheduling order to be agreed upon by the parties and the Court. There is no scheduling order in this matter yet, as the Court ordinarily does not require the parties to meet pursuant to Rule 16 or conduct a scheduling conference until after the pleadings are closed and all Rule 12(b) motions have been decided.

The Diocese and Bishop Saltarelli therefore request that you withdraw your Motion at this time. Please respond to me by Monday October 22, 2007, at 5 p.m. regarding this request. If we do not hear from you promptly, we will seek relief from the Court on this issue. Please feel free to call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mary F. Dugan". The signature is fluid and cursive, with the first name "Mary" being the most prominent part.

Mary F. Dugan

MFD:mej

cc: Thomas C. Crumplar, Esquire (via e-mail)  
Mark L. Reardon, Esquire (via e-mail)  
Stephen P. Casarino, Esquire (via e-mail)  
Anthony G. Flynn, Esquire

## **Exhibit “B”**

**Dugan, Mary**

---

**From:** Stephen J. Neuberger [SJN@neubergerlaw.com]  
**Sent:** Monday, October 22, 2007 4:54 PM  
**To:** Dugan, Mary  
**Cc:** Tom@JandClaw.com; Reardon, Mark; scasarino@casarino.com; Flynn, Anthony; Thomas S. Neuberger (TSN@NeubergerLaw.com); Robert Jacobs  
**Subject:** RE: Quill v. CDOW, et al

Mary,

Your letter is mistaken on both the facts and the law. Accordingly, your request is declined.

-Steve

-----Original Message-----

From: Dugan, Mary [mailto:mdugan@ycst.com]  
Sent: Thursday, October 18, 2007 5:21 PM  
To: Stephen J. Neuberger  
Cc: Tom@JandClaw.com; Reardon, Mark; scasarino@casarino.com; Flynn, Anthony  
Subject: Quill v. CDOW, et al

Please see attached letter.

<<CDOW-Quill-Dugan LT Neuberger.pdf>>

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